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**Admitted Pro Hac Vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

SIERRA CLUB and SOUTHERN BORDER
COMMUNITIES COALITION,

Plaintiffs,

v.

DONALD J. TRUMP, President of the
United States, in his official capacity, *et al.*,

Defendants.

Case no. 4:19-cv-00892-HSG

P.I. Hearing Date: May 17, 2019
Time: 10:00 AM

**MOTION FOR LEAVE TO FILE
MEMORANDUM OF BRENNAN
CENTER FOR JUSTICE AND CATO
INSTITUTE AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 The Brennan Center for Justice at NYU School of Law (“Brennan Center”) and The Cato
3 Institute (“Cato”) hereby request permission to file the attached *amicus curiae* brief in support of
4 the Plaintiffs’ request for a preliminary injunction. We believe we could provide useful context
5 for, and insight into, emergency powers and the National Emergencies Act of 1976. All parties
6 have consented to the filing of this brief. A copy of the proposed brief and a proposed order are
7 attached.

8 STATEMENT OF INTEREST AND ARGUMENT

9 The Brennan Center is a not-for-profit, non-partisan think tank and public interest law
10 institute that seeks to improve systems of democracy and justice. Cato is a non-partisan public
11 policy research foundation that advances individual liberty, free markets, and limited
12 government.

13 The Brennan Center has done extensive research on various aspects of emergency
14 powers. In December 2018, the Brennan Center published a guide to the 123 statutory provisions
15 that become available when the president declares a national emergency and their past uses.
16 Based on this research, the Brennan Center believes that President Trump’s declaration of a
17 national emergency to secure border wall funding after being denied that funding by Congress is
18 contrary to the intent and purpose of the NEA, is inconsistent with 40 years of presidential
19 practice, and could set a dangerous precedent in light of the dozens of other statutory emergency
20 powers that might be similarly abused. The Cato Institute agrees with these points, and believes
21 that allowing the president to declare an emergency under the circumstances presented in this
22 case would fundamentally upset the Constitution’s balance of power between the executive and
23 the legislature. These points, which are the focus of the proposed amicus brief attached to this
24 motion, provide important context for the Court’s decision in this case without being duplicative
25 of Plaintiff’s arguments.

26 The *amicus* brief expresses no opinion on whether the other sources of funding that
27 President Trump is seeking to use to construct a border wall are properly used.

1 Accordingly, the Brennan Center and Cato request leave to file the attached *amicus* brief.

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3 DATED: May 2, 2019

Respectfully Submitted,

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5 By: /s/ Elizabeth Goitein

6 Elizabeth Goitein*

7 J. Andrew Boyle*

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